

**REMARKS**

Claims 1-25 were present for examination and all claims stand finally rejected by an Office Action mailed January 16, 2004. The present response is accompanied by a Request for a three month Extension of Time and a Request for Continuing Examination.

Claims 1-4 and 15-17 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for reasons specifically identified with regard to claims 1, 15 and 17. With regard to claim 1, the Examiner states that claim 1 at lines 19-21 is not understood. The cited lines of claim 1 mean that the substitute television program signal is included on some, but not all of the distribution trunks. This is believed conveyed by the referenced lines of claim 1 and no amendment is presently entered. Claim 15, has been cancelled above. With regard to claim 17 the Examiner asserts that lines 4-6 are indefinite. This claim section refers to the fact that one modulator exists for each channel of the spectrum for each distribution trunk. The specification, page 14, line 33-page 15, line 21 discusses this number of modulators which is also shown in Fig. 2. In the example described, there are three distribution trunks and 13 channels is the spectrum of channels for a total of 39 modulators. In Fig. 2 the video (baseband) switch is denoted 187, the three modulators for channel 2 are denoted 161, 162 and 163 and the three modulators for channel 13 are denoted 168, 169 and 170. In view of this explanation, applicant asserts that the § 112 rejection of claim 17 is traversed.

Claims 1-13 and 22-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wallerstein (U.S. 3,366,731) and Eskin et al. (U.S. 4,331,973). Claims 14-21 stand rejected under 35 U.S.C. 103(a) as unpatentable over Wallerstein in view of Eskin and further in view of Oberle (U.S. 5,389,964).

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MPEP Section 706.02(j) states the following with regard to rejections under 35 U.S.C. 103

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

Applicant asserts that the Examiner has failed to establish a *prima facie* case of obviousness because (1) there is no teaching or suggestion in the references to combine the references, and (2) even if the references are combined they do not teach or suggest the limitations in applicant's claims.

Wallerstein describes an arrangement for distributing television signals to a community by producing distribution trunks in a head end where some of the trunks may contain substitute signals. The particular set of signals received by a community member is determined by which trunk the community member is connected to. As described e.g., column 1, line 62-column 2, line 4 the trunks can be connected to the viewers in different geographical areas or to alternating households. No process is discussed to connect community members on the basis of demographic factors as discussed in the present application. Wallerstein mentions (column 2, lines 21-27) that his system permits measurement over time of the effectiveness of different stimuli,

but it does not discuss in any way how data would be collected or how the input of members of the community would be measured.

On the other hand, Eskin et al. system creates a single cable TV spectrum 14 which is distributed to all viewers in the community (Eskin et al., column 59, lines 12-17; column 6, lines 3-7; Figs 1, 2 and 3) The distributed spectrum includes normal channels and substitute channels. Each television of the relevant parts of the community includes an addressable converter box which is controlled by the cable head end to perform a substitution at the converter box. There is no teaching or suggestion of a combination including the type of distribution disclosed by Wallerstein because such is incompatible. Each distributed converter box of Eskin et al. requires all incoming signals, both normal and substitute, and the Wallerstein system is incompatible with that because it selects at the head end whether a distribution trunk will receive substitute or normal signals. Thus, these two references teach away from their combination and their combination in the present rejection is improper. Accordingly, applicant asserts that the 35 U.S.C. 103 rejection of claims 1-25 is traversed.

Even if the references are combined, which would be improper, their combination does not teach or suggest all of the limitations of applicant's claims. Claim 1 recites a plurality of product sales collection units each predominately collecting purchase information of consumers viewing receivers connected to the same distribution trunk i.e., receiving the same set of broadcast signals whether normal or substitute. This limitation is not taught or suggested by either reference or would it be taught or suggested by their combination. Further, claim 1 recites a market research computer including data for identifying particular sales collection units associated with each distribution trunk.

Wallerstein discloses no data collection and Eskin et al. cannot show or teach such a limitation because it does not distribute signals using distribution trunks as claimed. The Examiner asserts that the market research computer as claimed would be obvious, but no reference is cited to support the assertion, and no basis exists in Wallerstein or Eskin et al. Should the Examiner persist in the present rejection the applicant requests the identity of any additional art known to the Examiner so that a complete response can be formulated.

Neither of the references nor their combination would teach the limitation of claim 2 which recites that the controller for controlling signal substitution on the distribution trunks identifies such substitution to an analysis computer. Wallerstein does not suggest a controller for its distribution system, a market research computer, or a means for them to communicate. The market analysis computer of Eskin et al. would not understand the trunk distribution information from Wallerstein even if generated. Accordingly, the limitations of claim 2 are not taught or suggested. In view of the foregoing, applicant asserts that claim 1 and claims 2-4 which depend from claim 1 are allowable as they now stand.

Claim 5 recites associating one zone with each data collection point when a majority of purchase at a particular data collection point are made by purchases from that zone. No such step is taught or suggested by either reference or their combination. Further, claim 5 recites analyzing data by a data collection point based on the zones receiving normal and substitute programming to identify market significance of the substitute programming. No such analysis is taught or suggested by the references. Wallerstein does not suggest how analysis should be undertaken. Eskin et al. analyzes data based only on panelist identities assigned to members of the community-not on

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the basis of data collection points or zones. Accordingly, claim 5 is not obvious even if combination of the references is made.

The Examiner summarily discounts claim 6 which recites identifying consumer data collection points located in stores where a majority of purchases are made by consumers from one zone. No such identifying step is taught or suggested by the references. Wallerstein does not collect data, it only implies that some unexplained analysis may occur. Eskin et al. analyses data based on panelists IDs and thus need not identify as recited in claim 6. In view of the foregoing, claim 6 is not obvious even if the references are combined.

The limitations of claim 9 are not taught or suggested by a possible combination of Wallerstein and Eskin et al. for the reasons discussed with regard to claim 1. Claim 10, which depends from claim 9, is limited to data collectors located in a store a majority of whose purchases are from one zone. No such location of data collection points is taught or suggested by a combination of the references.

With regard to claim 11, the Examiner speculates that although the references do not show or teach the limitations of the claim, such a claim is obvious. If the Examiner has art teaching or suggesting claim 11, in combination with other art or alone, he is hereby requested to identify it so that a complete response can be prepared. The applicant accepts the Examiners statement that the limitation of claim 11 are not in the cited references

Claim 12 recites that the zones (as represented by connections to distribution trunks) connected to given distribution trunks are selected demographically to represent the community. No such limitation is taught or suggested by the references. Eskin et al., has no zoning. Wallerstein only discusses geographic or alternating connections. Again, the

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Examiner explains that such would have been obvious, but such appears to be the result of hind sight.

Regarding claim 22 the Examiner sets forth the rejection in detail. Applicant however, does not agree with the details. Claim 22 recites a step of storing in a market research computer, data representing association between consumer parameters and zones, the step of presenting programming ... after the preceding storing step (emphasis added) and the step of conducting a survey.....after the presenting step (emphasis added). Nothing in Wallerstein or Eskin et al. teaches or shows the sequence of steps being performed in the order claimed. Wallerstein does not teach or suggest methods of data collection. As the Examiner sets forth Eskin et al. teaches scanning consumer IDs by a store scanner, but the Examiner uses this same act of Eskin et al. to represent both the claimed step of storing data and the step of conducting a survey. This is not correct, at least because the step of conducting a survey is performed after the step of presenting programming which is performed after the data storing step. Thus, the cited references or their combination do not suggest or teach the limitation of claim 22. In view of the foregoing, applicant asserts that claim 22 and claims 23-25 which depend therefrom are allowable.

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The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully requested,

FITCH, EVEN, TABIN & FLANNERY

By Kenneth H. Samples  
Kenneth H. Samples  
Registration No.: 25,747

Date: July 16, 2004  
120 South LaSalle Street  
Suite 1600  
Chicago, Illinois 60603-3406  
Telephone: (312) 577-7000  
Facsimile: (312) 577-7007

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